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FILED
U.S. DISTRICT COURT
2013 NOV 15 3:58
DISTRICT OF UTAH
BY: _____ RECEIVED CLERK
NOV 04 2013
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF UTAH, CENTRAL DIVISION**

COMMUNITY TELEVISION OF UTAH,
LLC d/b/a KSTU FOX 13, KUTV LICENSEE,
LLC d/b/a KUTV and KMYU, and FOX
BROADCASTING COMPANY,

Plaintiffs,

vs.

AEREO, INC.,

Defendant.

**MOTION FOR TRANSFER OF RELATED
CASE**

Civil No. 2:13-cv-00910

District Judge David Nuffer

MOTION FOR TRANSFER OF RELATED CASE

Plaintiff Nexstar Broadcasting, Inc. (“Nexstar”) respectfully moves this Court pursuant to DUCivR 83-2(g) for an order transferring, to this Court, Case No. 2:13-cv-00975, captioned *Nexstar Broadcasting, Inc. v. Aereo, Inc.*, pending before District Judge Bruce S. Jenkins. For reasons set forth below, Case No. 2:13-cv-00975 is related to the above-captioned, lower-numbered action within the meaning of DUCivR 83-2(g) and should be transferred to this Court as a result. In accordance with DUCivR 83-2(g), Nexstar will file a Notice of Motion for Transfer of Related Case in Case No. 2:13-cv-00975.

STATEMENT OF FACTS

1. This case (Case No. 2:13-cv-00910) involves claims for copyright infringement brought by copyright owners against defendant Aereo, Inc. (“Aereo”) for the unauthorized retransmission of copyrighted television broadcast programming over the Internet in the Salt Lake City region. Plaintiffs in Case No. 2:13-cv-00910 seek, among other relief, declaratory relief that Aereo infringes the plaintiffs’ copyrights, preliminary and permanent injunctive relief enjoining the Aereo service, and statutory and/or actual damages. (*See* Compl., Case No. 2:13-cv-00910, Dkt. No. 3.)

2. Case No. 2:13-cv-00975 also involves claims for copyright infringement brought by copyright owner Nexstar against defendant Aereo for the unauthorized retransmission of copyrighted television broadcast programming over the Internet in the Salt Lake City region. Plaintiff Nexstar in Case No. 2:13-cv-00975 seeks, among other relief, declaratory relief that Aereo infringes Nexstar’s copyrights, preliminary and permanent injunctive relief enjoining the Aereo service, and statutory and/or actual damages. (*See* Compl., Case No. 2:13-cv-00975, Dkt. No. 2.)

3. Preliminary injunction motions have been filed in both cases, which seek to enjoin Aereo from retransmitting, without permission or license, the plaintiffs' respective broadcast television programming over the Internet. Both preliminary injunction motions are brought on the basis that Aereo infringes the respective plaintiff's public performance rights under the Copyright Act, including the Transmit Clause, 17 U.S.C. § 101. (*See* Case No. 2:13-cv-00910, Dkt. No. 5); Case No. 2:13-cv-00975, Dkt. No. 8.)

ARGUMENT

THE COURT SHOULD ENTER AN ORDER TRANSFERRING NEXSTAR'S RELATED LAWSUIT AGAINST AEREO TO THIS COURT

This case and Case No. 2:13-cv-00975 ("Nexstar's Related Lawsuit") are related both factually and legally. As a result, this Court should transfer Nexstar's Related Lawsuit to this Court pursuant to DUCivR 83-2(g).

DUCivR 83-2(g) provides that "[w]henver two or more related cases are pending before different judges of this court, any party to the later-filed case may file" a motion to transfer the case "to the judge with the lower-numbered case." To determine whether a case should be transferred as a related case, courts consider a number of factors, including:

- (i) Whether the cases arise from the same or a closely related transaction or event;
- (ii) Whether the cases involve substantially the same parties or property;
- ...
- (iv) Whether the cases call for a determination of the same or substantially related questions of law and fact;
- (v) Whether the cases would entail substantial duplication of labor or unnecessary court costs or delay if heard by different judges; and
- (vi) Whether there is risk of inconsistent verdicts or outcomes[.]

This case and Nexstar's Related Lawsuit are related under each of these factors. As explained above, both cases assert copyright infringement claims against Aereo, based on Aereo's unauthorized retransmission of television broadcast programming over the Internet to subscribers in the Salt Lake City region. Plaintiffs in both cases seek similar relief and have filed preliminary injunction motions seeking to enjoin Aereo's service pending the respective lawsuits. Those preliminary injunction motions raise similar factual and legal issues regarding whether Aereo's service infringes the respective plaintiff's public performance rights under the Copyright Act, including the Transmit Clause, 17 U.S.C. § 101. Under the circumstances, litigating these cases separately before two different district judges would entail substantial duplication of labor and poses a risk of inconsistent results. For all these reasons, Nexstar's Related Lawsuit is related to this action within the meaning of DUCivR 83-2(g) and should be transferred to this Court.

CONCLUSION

For all of these reasons, Nexstar respectfully requests that this Court enter an order transferring the Nexstar Related Lawsuit to this Court.

Dated: November 4, 2013

Respectfully submitted,

/s/ Rodney R. Parker

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 4th day of November, 2013, I caused a true and correct copy of the foregoing **MOTION FOR TRANSFER OF RELATED CASE** to be filed via Hand Delivery with the Clerk of the Court, with notice of such filing to counsel of record, as follows:

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